

REPUBLIC OF SOUTH AFRICA

PUBLIC SERVICE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 29259 of 29 September 2006)
(The English text is the official text of the Bill)*

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B 31—2006]

ISBN 0-9802556-7-8

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Public Service Act, 1994, so as to substitute the definition provision; to substitute obsolete references; to enable the Minister to extend determinations on conditions of service to specified categories of employees; to clarify certain powers of the Minister and enable the Minister to establish a consultative or advisory body; to replace the term “provincial administration” with the term “the Office of a Premier”; to provide for the establishment of government agencies; to revise the effective date of actions and the effect of collective bargaining; to provide for the correction of actions and the investigation of non-compliance; to redefine the different employment capacities in the public service; to set out the different ways of obtaining services of persons; to rationalise the provisions regarding appointments and the requirements thereof as well as the appointments of heads of departments and their career incidents; to provide that the Cabinet determines whether an executive authority may appoint advisers and how many; to rationalise probation requirements and provisions dealing with transfers within the public service; to regulate the change in employment capacity when employees are appointed or transferred to other departments; to clarify the provisions for transfers and secondments to and from the public service and provide for secondments within the public service; to allow an executive authority to retire an employee who is 55 years and older, but younger than 60 years, without pension penalisation; to introduce measures dealing with non-compliance with the Act; to ensure due process with respect to the implementation of a sanction of dismissal on account of misconduct; to align the grounds for dismissal with the grounds for dismissal recognised by the Labour Relations Act, 1995; to regulate abscondment anew; to prohibit for a specified period the re-employment of an employee dismissed for misconduct related to corruption; to provide for the termination of an employee’s services due to supervening impossibility and reinstatement procedures in respect thereof; to clarify the provisions dealing with unauthorised remuneration paid to employees; to provide anew for temporary assignment of other work to employees and for acting in posts; to allow heads of department to submit grievances directly to the Public Service Commission; to require the exhaustion of internal grievance procedures before labour or other external legal remedies are used; to delete provisions regarding the political rights of employees and to provide for employees’ candidacy for legislatures; to require regulations to determine the framework for certain remunerative advancement or awards; to clarify the provisions dealing with wrongly granted remuneration; to align the Minister’s regulation-making powers with his or her other powers and to eliminate duplication regarding these powers; to provide for the inclusion of determinations and directives in one or more public service handbooks; to provide for delegation and further delegation of powers and duties of executive authorities and heads of

department; to update Schedules 1 and 2 and to include the organisational components listed in Schedule 3 in Schedule 1; to provide for government agencies in Schedule 3; to replace the term “officer” with “employee” and the term “executing authority” with “executive authority”; to substitute or delete certain references to the Public Service Commission; and to provide for matters connected therewith.

BE IT ENACTED by the President of the Republic of South Africa, as follows:—

Substitution of section 1 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994, section 1 of Act 47 of 1997, section 1 of Act 86 of 1998, section 40 of Act 65 of 2002 and section 25 of Act 52 of 2003 5

1. The following section is hereby substituted for section 1 of the Public Service Act, 1994 (in this Act referred to as the principal Act):

“Definitions

1. In this Act, unless the context otherwise indicates—

- | | |
|--|---|
| <p>‘accounting officer’ means an accounting officer as defined in section 1 of the Public Finance Management Act;</p> <p>‘calendar month’ means a period extending from a day in one month to a day preceding the day corresponding numerically to that day in the following month, both days inclusive;</p> <p>‘collective agreement’ means a collective agreement referred to in section 5(3);</p> <p>‘Commission’ means the Public Service Commission established by section 196(1) of the Constitution;</p> <p>‘Commission Act’ means the Public Service Commission Act, 1997 (Act No. 46 of 1997);</p> <p>‘Constitution’ means the Constitution of the Republic of South Africa, 1996;</p> <p>‘days’ means any days other than Saturdays, Sundays or public holidays as defined in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);</p> <p>‘department’ means a national department, a national government agency, the Office of a Premier, a provincial department or a provincial government agency;</p> <p>‘educator’ means an educator as defined in section 1 of the Employment of Educators Act, 1998 (Act No. 76 of 1998);</p> <p>‘electronic government’ means the use of information and communication technologies in the public service to improve its internal functioning and to render services to the public;</p> <p>‘employee’ means a person contemplated in section 8, but excludes a person appointed in terms of section 12A;</p> <p>‘employment practice’ includes—</p> <ul style="list-style-type: none"> (a) recruitment procedures, advertising and selection criteria; (b) appointment and the appointment process; (c) job and occupational classification and grading; (d) remuneration and other conditions of service; (e) job assignments; (f) the working environment; (g) work facilities; (h) training and development; (i) employee performance management systems and practices; (j) transfer and secondment; (k) discipline; (l) management of poor performance and ill health; (m) termination of employment; | <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> |
|--|---|

‘establishment’ means the posts which have been created for the normal and regular requirements of a department;	
‘executive authority’ , in relation to—	
(a) the Presidency or a national government agency within the President’s portfolio, means the President;	5
(b) a department or national government agency within a Cabinet portfolio, means the Minister responsible for such portfolio;	
(c) the Office of the Commission, means the Chairperson of the Commission;	10
(d) the Office of a Premier or a provincial government agency within a Premier’s portfolio, means the Premier of that province; and	
(e) a provincial department or a provincial government agency within an Executive Council portfolio, means the member of the Executive Council responsible for such portfolio;	15
‘government agency’ means a national government agency or a provincial government agency;	
‘gratification’ means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);	20
‘head of department’, ‘head of a department’ or ‘head of the department’ means the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 and includes any employee acting in such post;	25
‘Labour Relations Act’ means the Labour Relations Act, 1995 (Act No. 66 of 1995);	
‘member of the Intelligence Services’ means a member of—	
(a) the National Intelligence Agency appointed, or deemed to have been appointed, in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002);	30
(b) the South African National Academy of Intelligence appointed, or deemed to have been appointed, in terms of that Act; or	
(c) the South African Secret Service appointed, or deemed to have been appointed, in terms of that Act;	35
‘member of the services’ means a member of—	
(a) the Regular Force of the South African National Defence Force appointed, or deemed to have been appointed, in terms of the Defence Act, 2002 (Act No. 42 of 2002);	40
(b) the South African Police Service appointed, or deemed to have been appointed, in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); or	
(c) the Department of Correctional Services appointed, or deemed to have been appointed, in terms of the Correctional Services Act, 1998 (Act No. 111 of 1998);	45
‘Minister’ means the Minister for the Public Service and Administration;	
‘month’ means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of a year;	50
‘national department’ means a national department referred to in section 7(2);	
‘national government agency’ means a national government agency referred to in section 7(2);	
‘Office of a Premier’ means the Office of a Premier referred to in section 7(2);	55
‘organ of state’ means an organ of state as defined in section 239 of the Constitution;	
‘post’ means a post on the establishment for which financial provision exists;	60
‘prescribed’ means prescribed by regulation;	

‘**principal department**’, in relation to a national or provincial government agency, means the department listed in column 3 in Part A or B of Schedule 3;

‘**provincial department**’ means a provincial department referred to in section 7(2);

‘**provincial government agency**’ means a provincial government agency referred to in section 7(2);

‘**Public Finance Management Act**’ means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

‘**public service**’ means the public service contemplated in section 8;

‘**regulation**’ means a regulation made in terms of section 41;

‘**revenue**’ means the National Revenue Fund established by section 213(1) of the Constitution or, in relation to any province, the relevant Provincial Revenue Fund established by section 226(1) of the Constitution, as the case may be;

‘**salary level**’ means a set of salaries;

‘**salary scale**’ means a set of salary levels from a minimum to a maximum;

‘**this Act**’ includes the regulations, determinations, deemed determinations and directives made in terms of this Act.”.

Amendment of section 2 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994, section 2 of Act 47 of 1997, section 40 of Act 65 of 2002 and section 25 of Act 52 of 2003

2. Section 2 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) Where **[persons employed in] members of the services, [or state educational institutions] educators or members of the Intelligence Services** are not excluded from the provisions of this Act, those provisions shall apply only in so far as they are not contrary to the laws governing their employment.”;
- (b) by the insertion after subsection (2) of the following subsection:
- “(2A) Notwithstanding subsection (2) and any other legislation to the contrary, the Minister may, after consultation with the relevant executive authority or authorities, determine that any conditions of service or any other employment practice provided for by or under this Act shall apply to all or any category of—
- (a) educators; or
- (b) members of the services, except members of the Regular Force of the South African National Defence Force, appointed, or deemed to have been appointed, in terms of the Defence Act, 2002 (Act No. 42 of 2002).”; and
- (c) by the deletion of subsections (3) and (5).

Substitution of section 3 of Act promulgated under Proclamation 103 of 1994, as substituted by section 3 of Act 47 of 1997 and amended by section 2 of Act 86 of 1998

3. The following section is hereby substituted for section 3 of the principal Act:

“Functions of Minister and executive authorities

3. (1) The Minister is responsible for establishing norms and standards relating to—
- (a) the functions of the public service;
- (b) the organisational structures and establishments of departments and other organisational and governance arrangements in the public service;
- (c) the conditions of service and other employment practices for employees;
- (d) labour relations in the public service;
- (e) health and wellness of employees;

- (f) information management in the public service;
- (g) electronic government;
- (h) integrity, ethics, conduct and anti-corruption in the public service; and
- (i) transformation, reform, innovation and any other matter to improve the effectiveness and efficiency of the public service and its service delivery to the public. 5
- (2) The Minister shall give effect to subsection (1) by making regulations, determinations and directives, and by performing any other acts provided for in this Act.
- (3) (a) The Minister may, by regulation, establish one or more bodies consisting of prescribed employees or other persons or both such employees and persons to serve as a consultative body for, or an advisory body to, the Minister on any matter referred to in subsection (1). 10
- (b) The functions and procedures of such body, the remuneration (if any) of its members and any matter necessary to be regulated for its effective or efficient functioning may be prescribed. 15
- (4) The Minister may—
- (a) for the purposes of section 7(5), advise the President regarding the establishment or abolition of any department, the designation of any such department and the head thereof or the amendment of such designation; 20
- (b) after consultation with the relevant executive authority or executive authorities, as the case may be, make determinations regarding—
- (i) the allocation of any function to, or the abolition of any function of, any national department or national government agency; or 25
- (ii) the transfer of any function from one national department or national government agency to another or from a national department to a national government agency or any other body or from a national government agency to a national department or any other body or from any other body to a national department or national government agency; 30
- (c) in consultation with the Premier of the province concerned, make determinations regarding—
- (i) the allocation of any function to, or the abolition of any function of, the Office of the Premier, provincial department or provincial government agency; or 35
- (ii) the transfer of any function from—
- (aa) the Office of the Premier, provincial department or provincial government agency of a province to the Office of the Premier, provincial department or provincial government agency of another province; 40
- (bb) the Office of the Premier, provincial department or provincial government agency to a national department or any body established by or under any law, other than a provincial law; or 45
- (cc) a national department or such other body to the Office of the Premier, provincial department or provincial government agency. 50
- (5) (a) The Minister may make determinations regarding any conditions of service of employees generally or categories of employees, including determinations regarding a salary scale for all employees or salary scales for particular categories of employees and allowances for particular categories of employees. 50
- (b) A determination involving expenditure from revenue shall be made in consultation with the Minister of Finance. 55
- (6) (a) If so requested by the President or an executive authority, the Minister may advise, or assist in such manner or on such conditions as the Minister may determine, the President or the relevant executive authority as to any matter relating to— 60
- (i) the public service;
- (ii) any staffing arrangements or employment practice regarding any organ of state; or

- (iii) the remuneration or other conditions of appointment of the office-bearers of any board, institution or body.
- (b) For the purposes of paragraph (a), the Minister, or any person authorised in writing by the Minister, has access to such official documents and may obtain such information from the chairperson or head of the relevant board, institution or body as may be necessary to advise or assist the President or the relevant executive authority.
- (7) An executive authority has all those powers and duties necessary for—
- (a) the internal organisation of the department concerned, including its organisational structure and establishment, the transfer of functions within that department, human resources planning, the creation and abolition of posts and provision for the employment of persons additional to the fixed establishment; and
- (b) the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities,
- and such powers and duties shall be exercised or performed by the executive authority in accordance with the provisions of this Act.
- (8) (a) The relevant executive authority may, subject to paragraphs (b) and (c), perform any act in connection with any matter which relates to or arises from the employment or the conditions of service of a person formerly employed in the public service whilst he or she was so employed in the department concerned.
- (b) An executive authority may only so perform an act if he or she would at the relevant time have been competent in terms of this Act or any other law to perform any such act in respect of a serving employee.
- (c) No such act shall be to the detriment of the person concerned, and the relevant executive authority shall not perform any such act in respect of any such person after the expiry of a period of three years after he or she ceased to be so employed.
- (d) On request of the relevant executive authority and on good cause shown, the Minister may in respect of a particular person extend the period of three years with such period as the Minister considers appropriate.”.

Substitution of section 3A of Act promulgated under Proclamation 103 of 1994, as inserted by section 3 of Act 86 of 1998

4. The following section is hereby substituted for section 3A of the principal Act:

“Functions of Premiers

- 3A.** The Premier of a province may, in the province concerned—
- (a) subject to **[the provisions of]** section 7(5)[,] to (8)—
- (i) establish or abolish any provincial department **[of the provincial administration concerned]**, designate such department and the head thereof or amend any such designation;
- (ii) after consultation with the Minister and the Minister of Finance establish or abolish any provincial government agency or establish an existing body as a provincial government agency, designate such agency and the head thereof and designate the Office of the Premier or a provincial department as its principal provincial department or amend any such designation; and
- (b) make determinations regarding the allocation of any function to, or the abolition of any function of, any **[office or]** department **[of the provincial administration]** or government agency in the province concerned or the transfer of any function from **[one]** such **[office or]** department or agency to another department or agency in the province or from such office, **[or]** department or agency to any body established by or under any law of the provincial legislature or from any such body to such office, **[or]** department or agency.”.

Repeal of section 3B of Act promulgated under Proclamation 103 of 1994

5. Section 3B of the principal Act is hereby repealed.

Amendment of section 4 of Act promulgated under Proclamation 103 of 1994, as substituted by section 3 of Act 47 of 1997

6. Section 4 of the principal Act is hereby amended— 5
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 10
- “(a) shall provide such training or cause such training to be provided or conduct such examinations or tests or cause such examinations or tests to be conducted as the Head: South African Management and Development Institute may with the approval of the Minister decide or as may be prescribed as a qualification for the appointment[, **promotion**] or transfer of persons in or to the public service;”; and 10
- (b) by the deletion of subsections (3), (4) and (5).

Amendment of section 5 of Act promulgated under Proclamation 103 of 1994, as substituted by section 3 of Act 47 of 1997 15

7. Section 5 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1) to (4) of the following subsections, respectively: 20
- “(1) For the purposes of this section the term “act” means the making of any regulation, the making of any determination, the issuing of any directive or the taking of any decision. 20
- (2) A determination or directive, or any withdrawal or amendment thereof, made or issued by the Minister in terms of this Act shall take effect on the date of the written communication conveying the making of the determination, the issuing of the directive or the withdrawal or amendment thereof, unless expressly stated otherwise in that communication, determination or directive. 25
- (3) Any act by the Minister in terms of any provision of this Act which relates to all employees, a category of employees or a particular employee may be effected retrospectively if— 30
- (a) circumstances exist which justify such retrospective effect; and
- (b) the act is not to the detriment of the employee or employees concerned. 35
- (4) Any act by any functionary in terms of this Act may not be contrary to the provisions of—
- (a) any collective agreement contemplated in item 15(i) of Schedule 7 to the Labour Relations Act, 1995 (Act No. 66 of 1995); or 40
- (b) any collective agreement concluded by a bargaining council established in terms of the said Act for the public service as a whole or for a particular sector in the public service.”; 40
- (b) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 45
- “Notwithstanding **[the provisions of]** subsection (4), but subject to the Labour Relations Act—”;
- (c) by the deletion in subsection (5) of paragraph (a); and
- (d) by the addition of the following subsections: 50
- “(6) (a) Any provision of a collective agreement contemplated in subsection (4), concluded on or after the commencement of the Public Service Amendment Act, 2006, shall, in respect of conditions of service of employees appointed in terms of this Act, be deemed to be a determination made by the Minister in terms of section 3(5). 50

(b) Subject to subsection (4), the Minister may supplement or elucidate such deemed determination by means of a determination made in terms of section 3(5).

(7) (a) A functionary shall correct any action or omission purportedly made in terms of this Act by that functionary, if the action or omission was based on an error of fact or law or fraud and it is in the public interest to correct the action or omission.

(b) The relevant executive authority shall in the prescribed manner keep record of and report to the Minister any correction by a functionary of a department within the portfolio of that executive authority.

(8) (a) The Minister may investigate any alleged non-compliance with this Act and, if the investigation confirms a non-compliance, take such steps as may be necessary to correct the consequences of the non-compliance.

(b) Any steps taken by the Minister under paragraph (a) may include the exercise of any power conferred, or the performance of any duty imposed, on the relevant executive authority or head of department by this Act—

- (i) in the case of a national department or national government agency, after consultation with the relevant executive authority;
- (ii) in the case of the Office of a Premier or a provincial government agency falling under that Premier's portfolio, in consultation with the Premier in question; or
- (iii) in the case of a provincial department or provincial government agency, in consultation with the relevant Member of the Executive Council.

(c) Any power so exercised or any duty so performed by the Minister shall be deemed to be a power exercised or a duty performed by the relevant executive authority or head of department.

(d) The Minister shall inform the Chairperson of the Public Service Commission of—

- (i) an intended investigation in terms of this subsection, before its commencement; and
- (ii) the outcome of an investigation conducted in terms of this subsection.”.

Substitution of section 6 of Act promulgated under Proclamation 103 of 1994, as substituted by section 3 of Act 47 of 1997

8. The following section is hereby substituted for section 6 of the principal Act:

“Access to documents and information by Minister

6. The Minister, or any person authorised in writing by the Minister, has access to such official documents or may obtain such information from [heads of department or from officers or] executive authorities and employees in the public service [of those departments] as may be necessary for the performance of his or her functions under this Act or any other law.”.

Amendment of section 7 of Act promulgated under Proclamation 103 of 1994, as amended by section 4 of Act 47 of 1997 and section 4 of Act 86 of 1998

9. Section 7 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of the administration of the public service there shall be—

- (a) national departments and Offices of the Premier mentioned in column 1 of Schedule 1;
- (b) provincial departments mentioned in column 1 of Schedule 2;
- (c) national government agencies mentioned in column 1 of Part A of Schedule 3; and
- (d) provincial government agencies mentioned in column 1 of Part B of Schedule 3.”.

- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) Each department shall have a head **[of department]** who **[as an officer]** shall be the incumbent of the post on the **[fixed]** establishment bearing the designation mentioned in **[the second]** column 2 of Schedule 1, 2 or 3 opposite the name of the relevant department or agency, or the **[officer]** employee who is acting in that post.”;
- (c) by the substitution in subsection (3) for paragraphs (c) and (d) of the following paragraphs, respectively:
- “(c) In addition to any power or duty entrusted or assigned by or under this Act or any other law to the head of **[a provincial administration]** the Office of a Premier, the said head shall—
- (i) be the Secretary to the Executive Council of the province concerned;
- (ii) subject to **[the provisions of]** sections 85(2)(c) and 125(2)(e) of the Constitution, be responsible for intergovernmental relations on an administrative level between the relevant **[provincial administration]** province and other **[provincial administrations]** provinces as well as national departments and national government agencies and for the intra-governmental co-operation between the relevant **[provincial administration]** Office of the Premier and **[its]** the various provincial departments and provincial government agencies, including the co-ordination of their actions and legislation; and
- (iii) subject to **[the provisions of]** paragraph (d), be responsible for the giving of strategic direction on any matter referred to in section **[3(2)(a)]** 3(1).
- (d) The head of **[a provincial administration]** the Office of a Premier shall in respect of a provincial department of the relevant province exercise no power or perform no duty which is entrusted or assigned by or under this Act or any other law to the head of the provincial department.”;
- (d) by the deletion in subsection (3) of paragraph (e);
- (e) by the deletion of subsection (4);
- (f) by the substitution for subsection (5) of the following subsections:
- “(5) Subject to subsection (8), section 7A and the principles contained in section 195 of the Constitution, the President may by proclamation in the *Gazette*—
- (a) on the advice of the Minister amend Schedule 1 so as to establish or abolish any national department, designate such department and the head thereof or amend any such designation; or
- (b) at the request of the Premier of a province amend Schedule 2 so as to reflect the establishment, abolition, designation or amendment in respect of any provincial department contemplated in section 3A(a)(i);
- (c) at the request of the relevant executive authority and on the advice of the Minister and the Minister of Finance amend Part A of Schedule 3 so as to establish or abolish any national government agency or establish an existing body as such an agency or designate any such agency and the head and principal department thereof or amend any such designation; or
- (d) at the request of the Premier of a province amend Part B of Schedule 3 so as to reflect the establishment, abolition, designation or amendment in respect of a provincial government agency contemplated in section 3A(a)(ii).
- (6) If considered necessary, the President may effect an amendment contemplated in subsection (5) retrospectively to a date requested by the Minister, the relevant executive authority or the Premier, as the case may be.

(7) The President shall give effect to any request referred to in subsection (5)(b) or (d) if the President is satisfied that it is consistent with the provisions of the Constitution, this Act and any other applicable law.

(8) Only the head of a national department and the Office of a Premier may bear the designation of ‘Director-General’.” 5

Insertion of section 7A in Act promulgated under Proclamation 103 of 1994

10. The following section is hereby inserted in the principal Act after section 7:

“Government agencies

7A. (1) The head of a government agency, established in terms of section 7(5)(c) or (d), may have any one or more of the following powers or duties or both such powers and duties:

- (a) Powers conferred or duties imposed by national or provincial legislation;
- (b) powers or duties assigned in terms of subsection (3) or other legislation; and
- (c) powers or duties delegated in terms of subsection (4) or other legislation.

(2) For each government agency the relevant executive authority, in consultation with the Minister and the Minister of Finance and by notice in the *Gazette*—

- (a) shall—
 - (i) list the relevant provisions of legislation which confer powers and impose duties on the head of the agency; and
 - (ii) include in that notice a reference to each notice regarding assigned powers and duties of the head of the agency contemplated in subsection (3);
- (b) may list the delegated powers and duties of the head of the agency contemplated in subsection (4);
- (c) shall, subject to applicable legislation, determine the reporting requirements to the head of the principal department to enable that head to advise the relevant executive authority on the oversight of the agency on policy implementation, performance, integrated planning, budgeting and service delivery;
- (d) may include in that notice any administrative or operational matter relating to the agency, including the sharing of internal services with the principal department;
- (e) may establish an advisory board without executive functions for the agency and determine the board’s composition, appointment procedure and remuneration and all matters required for its effective and efficient functioning; and
- (f) may include in that notice any other matter necessary for the effective and efficient functioning of the agency.

(3) (a) Notwithstanding anything to the contrary in any other law, the executive authority of a government agency may assign to the head of that agency any power conferred or duty imposed on—

- (i) that executive authority (except the making of regulations) by national legislation; or
- (ii) any official of the principal department of that agency by national legislation.

(b) Such assignment is subject—

- (i) if the executive authority is not the Minister responsible for the administration of the national legislation in question (in this section referred to as “the responsible Minister”), to approval by that Minister;
- (ii) to the approval of Parliament of the intended notice as contemplated in this subsection; and
- (iii) to publication by notice in the *Gazette*.

- (c) The notice shall stipulate—
- (i) the powers and duties to be assigned in terms thereof;
 - (ii) the effective date of the assignment; and
 - (iii) the conditions that the executive authority considers appropriate.
- (d) The responsible Minister shall table the notice in Parliament for approval.
- (e) Parliament may reject the notice within 90 days after it has been tabled, if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session.
- (f) If Parliament rejects such notice, the responsible Minister may table an amended notice in Parliament.
- (g) If the responsible Minister tables an amended notice and Parliament—
- (i) approves the amended notice, the responsible Minister must publish that notice in terms of paragraph (b)(iii) within 30 days of Parliament’s approval; or
 - (ii) rejects the amended notice within 90 days after it has been tabled, if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session, paragraph (f) and this paragraph apply.
- (h) If Parliament does not reject a notice as contemplated in paragraph (e) or (g)(ii)—
- (i) such notice shall be deemed to have been approved by Parliament; and
 - (ii) the responsible Minister must publish the notice in terms of paragraph (b)(iii) within 30 days after expiry of the periods referred to in paragraph (e) or (g)(ii), as the case may be.
- (i) A notice may at any time in like manner be amended or withdrawn.
- (j) Any assignment in terms of this subsection shall divest the person who was vested with the assigned power or duties.
- (k) Nothing in this Act prevents the assignment of powers or duties to the head of a provincial government agency or the agency itself in accordance with provincial legislation of the province in question.
- (4) (a) Notwithstanding anything to the contrary in any other law, the executive authority of a government agency or the head of the principal department of that agency may, except a power or duty to make regulations—
- (i) delegate to the head of the agency any power conferred on that executive authority or head of the principal department by national legislation; or
 - (ii) authorise the head of the agency to perform any duty imposed on the executive authority or head of the principal department by national legislation.
- (b) Any person to whom a power has been so delegated or who has been so authorised to perform a duty shall exercise that power or perform that duty subject to the conditions that the person who made the delegation or granted the authorisation considers appropriate.
- (c) Any delegation of a power or authorisation to perform a duty in terms of paragraph (a)—
- (i) shall be in writing;
 - (ii) does not prevent the person who made the delegation or gave the authorisation from exercising that power or performing that duty himself or herself; and
 - (iii) may at any time be withdrawn in writing by that person.”.

Substitution of section 8 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994, section 5 of Act 47 of 1997, section 40 of Act 65 of 2002 and section 25 of Act 52 of 2003

11. The following section is hereby substituted for section 8 of the principal Act:

“Composition of public service” 5

- 8.** (1) The public service shall consist of persons who are employed—
- (a) in posts on the establishment of departments; and
 - (b) additional to the establishment of departments.
- (2) Subject to the prescribed conditions, any person referred to in subsection (1) may be employed permanently or temporarily and in a full-time or part-time capacity.
- (3) For the purpose of this Act, in relation to employment—
- (a) the word ‘permanently’ or ‘permanent’ means an employee to whom a retirement age in section 16 applies; and
 - (b) the word ‘temporarily’ or ‘temporary’ means not permanently employed.”. 10 15

Substitution of heading to Chapter IV

12. The following heading is hereby substituted for the heading to Chapter IV of the principal Act:

**“CHAPTER IV
EMPLOYMENT IN PUBLIC SERVICE”**. 20

Insertion of section 8A in Act promulgated under Proclamation 103 of 1994

13. The following section is hereby inserted in Chapter IV of the principal Act before section 9:

“Mechanisms for obtaining services of persons” 25

- 8A.** Services of persons may be obtained in terms of this Act by means of—
- (a) appointments in terms of section 9, including appointments of heads of department in terms of section 12;
 - (b) appointments in terms of section 12A on grounds of policy considerations; or
 - (c) deployments in the form of—
 - (i) transfers of heads of department in terms of section 12(3);
 - (ii) transfers in terms of section 14;
 - (iii) secondments in terms of section 15; and
 - (iv) assignments in terms of section 32.”. 30 35

Substitution of section 9 of Act promulgated under Proclamation 103 of 1994, as substituted by section 6 of Act 47 of 1997

14. The following section is hereby substituted for section 9 of the principal Act:

“Appointments in public service” 40

- 9.** An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.”.

Amendment of section 10 of Act promulgated under Proclamation 103 of 1994, as amended by section 7 of Act 47 of 1997 45

15. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“[(1)] No person shall be appointed permanently [or be transferred and appointed permanently under section 15(1)], whether on proba-

tion or not, to any post [**in the A or B division**] on the establishment in a department unless he or she—

- (a) is a South African citizen or permanent resident; and
- (b) is [**of good character; and**
- (c) **in so far as his or her condition of health is concerned, complies with such requirements as may be prescribed.]** a fit and proper person.”; and

(b) by the deletion of subsection (2).

Amendment of section 11 of Act promulgated under Proclamation 103 of 1994, as substituted by section 8 of Act 47 of 1997

16. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) In the making of any appointment [**or the filling of any post**] in terms of section 9 in the public service—

- (a) all persons who applied and qualify for the appointment [**transfer or promotion**] concerned shall be considered; and
- (b) the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress, in accordance with the Employment Equity Act, 1998 (Act No. 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.”; and

(b) by the deletion of subsection (3).

Substitution of section 12 of Act promulgated under Proclamation 103 of 1994, as substituted by section 9 of Act 47 of 1997 and amended by section 5 of Act 86 of 1998

17. The following section is hereby substituted for section 12 of the principal Act:

“Appointment of heads of department and career incidents

12. (1) Notwithstanding anything to the contrary contained in this Act, but subject to this section and section 32(2)(b)(i), the appointment and other career incidents of the heads of department and government agencies shall be dealt with, in the case of—

- (a) a head of a national department or national government agency, by the President; and
- (b) a head of the Office of a Premier, provincial department or provincial government agency, by the relevant Premier.

(2) (a) A person shall be appointed to the post of head of department in terms of section 9 for such term, not exceeding five years, as the relevant executive authority may approve.

(b) The head of department shall conclude the prescribed contract within the prescribed period.

(c) The relevant executive authority may at the expiry of the term of office of a head of department or at the expiry of an extended term of office extend the term for a period of not more than five years at a time.

(3) (a) The President may transfer the head of a national department or national government agency before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in a national department or national government agency in a post of equal, higher or lower grading, or additional to the establishment, as the President considers appropriate.

(b) The Premier of a province may transfer the head of the Office of the Premier, a provincial department or a provincial government agency before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in the Office of the Premier, a provincial department or a provincial government agency of the relevant province in a post of equal, higher or lower grading or additional to the establishment, as the Premier considers appropriate.

- (c) The President may, in consultation with the Premier or Premiers concerned, transfer before or at the expiry of his or her term, or extended term—
- (i) the head of a national department to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or a provincial government agency; or
 - (ii) the head of the Office of a Premier, a provincial department or a provincial government agency, to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or provincial government agency of another province or in a national department or national government agency,
- in a post of equal, higher or lower grading or additional to the establishment, as the President, in consultation with the Premier or Premiers, considers appropriate.
- (d) A transfer in terms of this subsection may only occur if—
- (i) the relevant head of department consents to the transfer; or
 - (ii) after due consideration of any representations by the head, the transfer is in the public interest.
- (e) Any person appointed as head of department or government agency who is transferred in terms of this subsection—
- (i) during his or her term of office or extended term—
 - (aa) shall for the unexpired portion of that term not suffer any reduction in salary and change of other conditions of service, unless he or she consents thereto; and
 - (bb) to a higher post shall not by reason only of that transfer be entitled to the higher salary applicable to the higher post; and
 - (ii) at the expiry of his or her term of office, or extended term, shall receive the salary and conditions of service attached to the capacity in which he or she is so transferred.
- (4) If it is in the public interest and it is allowed by a determination made in terms of section 3(5), an executive authority may, on the conditions provided for in such determination, grant a special service benefit to head of the relevant department before or at the expiry of his or her term of office or an extended term, or at the time of retirement or discharge from the public service.”.

Amendment of section 12A promulgated under Proclamation 103 of 1994, as inserted by section 6 of Act 86 of 1998

18. Section 12A of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “Subject to [**the provisions of**] this section, [**an executive authority**] such executive authorities as the Cabinet may determine may appoint one or more persons under a [**special**] contract, whether in a full-time or part-time capacity—”.

Substitution of section 13 of Act promulgated under Proclamation 103 of 1994, as substituted by section 10 of Act 47 of 1997 and amended by section 7 of Act 86 of 1998

19. The following section is hereby substituted for section 13 of the principal Act:

“Appointment or transfer on probation

- 13.** (1) If so required by regulation, an executive authority shall appoint or transfer an employee on probation for such period as may be prescribed for the relevant category of employees.
- (2) After the completion of a probationary period contemplated in subsection (1) an executive authority shall confirm the probationary appointment or transfer if the employee concerned has—
- (a) performed at least satisfactorily during the period; and

- (b) complied with all the conditions to which his or her appointment or transfer was subject.
- (3) If the probationary appointment or transfer is not confirmed in terms of subsection (2), the executive authority may extend the period of probation or dismiss the employee in accordance with the Labour Relations Act.”. 5

Substitution of section 14 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994, section 11 of Act 47 of 1997 and section 8 of Act 86 of 1998

20. The following section is hereby substituted for section 14 of the principal Act: 10

“Transfers within public service

- 14.** (1) Subject to subsections (2), (3) and (4), any employee of a department may be transferred—
- (a) within the department, by its executive authority;
- (b) to another department by the executive authorities of the two relevant departments. 15
- (2) Such transfer shall be made in such manner and on such conditions as may be prescribed.
- (3) An employee may be transferred under subsection (1) only if—
- (a) the employee requests the transfer or consents to the transfer; or 20
- (b) in the absence of such request or consent, after due consideration of any representations by the employee, the transfer is in the public interest.
- (4) An employee who has been transferred to a post with—
- (a) a lower salary than his or her salary before the transfer shall not upon such transfer suffer any reduction in salary, except if he or she requested the transfer or he or she consented to the reduction; or 25
- (b) a higher salary than his or her salary before the transfer shall not by reason only of that transfer be entitled to the higher salary.”.

Insertion of section 14A in Act promulgated under Proclamation 103 of 1994 30

21. The following section is hereby inserted in the principal Act after section 14:

“Change in employment capacity

- 14A.** An employee of a department who is appointed in terms of section 9 in another capacity in the same or another department, or transferred in terms of section 12(3) or 14, shall be deemed to continue employment in the public service without any break in service in respect of such conditions of service and to such extent as the Minister may determine in terms of section 3(5).”.
- 35

Substitution of section 15 of Act promulgated under Proclamation 103 of 1994, as substituted by section 12 of Act 47 of 1997 40

22. The following section is hereby substituted for section 15 of the principal Act:

“Transfer and secondment from and to public service

- 15.** (1) Any person who was employed by an organ of state immediately before he or she is appointed in terms of section 9 shall be deemed to be transferred to the public service in respect of such conditions of service and to such extent as the Minister may determine in terms of section 3(5). 45
- (2) If it is in the public interest and if the prescribed conditions (if any) have been complied with, the executive authority of a department may, with the approval of the employer concerned, approve the secondment of a person in the service of an organ of state, another government or any other body to the department— 50

- (a) for a particular service or period not exceeding the prescribed period (if any); and
- (b) on the prescribed conditions (if any) and such other conditions as agreed between the relevant functionary of the body concerned and the executive authority. 5
- (3) (a) The executive authority of a department may second an employee of the department to another department, any other organ of state, another government or any other body—
- (i) for a particular service or period not exceeding the prescribed period (if any); and 10
- (ii) on the prescribed conditions (if any) and such other conditions as agreed upon between the executive authority and the relevant functionary of the body concerned.
- (b) The secondment of an employee of a department may occur only if— 15
- (i) the employee requests, or consents to, the secondment; or
- (ii) in the absence of such request or consent, after due consideration of any representations by the employee, the secondment is in the public interest.
- (c) While on secondment, an employee remains subject to this Act and any other laws applicable to employees in the public service, except to the extent otherwise agreed upon, as provided for in paragraph (a)(ii).” 20

Amendment of section 16 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994, section 3 of Act 13 of 1996, section 1 of Act 67 of 1998, section 13 of Act 47 of 1997 and section 9 of Act 86 of 1998

23. Section 16 of the principal Act is hereby amended— 25
- (a) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:
- “(ii) if that notification is not given at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of such month as the executive authority may approve, which day may not be before the date on which he or she attains the said age and not be later than the first day of the fourth month after the month in which the notification is received.” 30
- (b) by the substitution in subsection (3) for paragraph (a) of the following subsection: 35
- “(a) Subject to the provisions of this section and the terms and conditions of a contract contemplated in section 12(2), an officer who occupies the office of head of department has the right to retire from the public service and he or she shall be so retired at the expiry of the term contemplated in that section [12(1) or (2)], or of any extended term contemplated therein, as the case may be.”; and 40
- (c) by the substitution for subsection (6) of the following subsection:
- “(6) (a) An executive authority may, at the request of an employee, allow him or her to retire from the public service before reaching the age of 60 years, notwithstanding the absence of any reason for discharge in terms of section 17(2), if sufficient reason exists therefor and the retirement will be to the advantage of the State. 45
- (b) If an employee is allowed to so retire, he or she shall, notwithstanding anything to the contrary contained in subsection (4), be deemed to have retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection.” 50

Insertion of sections 16A and 16B in Act promulgated under Proclamation 103 of 1994

24. The following sections are hereby inserted after section 16 of the principal Act:

“Failure to comply with Act

- 16A.** (1) An executive authority shall— 5
- (a) immediately take appropriate disciplinary steps against a head of department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder;
 - (b) immediately report to the Minister the particulars of such non-compliance; and 10
 - (c) as soon as possible report to the Minister the particulars of the disciplinary steps taken.
- (2) A head of a department shall—
- (a) immediately take appropriate disciplinary steps against an employee of the department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder; 15
 - (b) immediately report to the Director-General: Public Service and Administration the particulars of such non-compliance; and
 - (c) as soon as possible report to that Director-General the particulars of the disciplinary steps taken. 20
- (3) The Minister may report to the Cabinet or, through the relevant Premier, to the Executive Council of the relevant province any non-compliance by an executive authority with a provision of this Act or a regulation, determination or directive made thereunder.
- (4) The Minister shall at least annually submit to the relevant committees of Parliament and, through the relevant Premier, to the relevant committees of the relevant provincial legislature, every non-compliance with a provision of this Act or a regulation, determination or directive made thereunder— 25
- (a) reported in terms of subsection (1) or (2); or 30
 - (b) confirmed in an investigation in terms of section 5(8).

Discipline

- 16B.** (1) Subject to subsection (2), when a chairperson of a disciplinary hearing pronounces a sanction in respect of an employee found guilty of misconduct, the following persons shall give effect to the sanction: 35
- (a) In the case of a head of department, the relevant executive authority; and
 - (b) in the case of any other employee, the relevant head of department.
- (2) Where an employee may lodge an internal appeal provided for in a collective agreement or in a determination in terms of section 3(5), a sanction referred to in subsection (1) may only be given effect to— 40
- (a) if an internal appeal is lodged, after the appeal authority has confirmed the sanction pronounced by the chairperson of a disciplinary hearing; or
 - (b) if no internal appeal is lodged, after the expiry of the period within which the appeal must have been lodged. 45
- (3) The Minister shall by regulation make provision for—
- (a) a power for chairpersons of disciplinary hearings to summon employees and other persons as witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and other objects; and 50
 - (b) travel, subsistence and other costs and other fees for witnesses at disciplinary hearings.
- (4) If an employee of a department (in this subsection referred to as ‘the new department’), is alleged to have committed misconduct in a department by whom he or she was employed previously (in paragraph (b) referred to as ‘the former department’), the head of the new department— 55

- (a) may institute or continue disciplinary steps against that employee; and
 (b) shall institute or continue such steps if so requested—
 (i) by the former executive authority if the relevant employee is a head of department; or
 (ii) by the head of the former department, in the case of any other employee.

(5) In order to give effect to subsection (4), the two relevant departments shall co-operate, which may include exchanging documents and furnishing such written and oral evidence as may be necessary.”.

Substitution of section 17 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994 and section 14 of Act 47 of 1997

25. The following section is hereby substituted for section 17 of the principal Act:

“Termination of employment

17. (1) (a) Subject to paragraph (b), the power to dismiss an employee shall vest in the relevant executive authority and shall be exercised in accordance with the Labour Relations Act.

(b) The power to dismiss an employee on account of misconduct in terms of subsection (2)(d) shall be exercised as provided for in section 16B(1).

(2) An employee of a department, other than a member of the services, an educator or a member of the Intelligence Services, may be dismissed on account of—

- (a) incapacity due to ill health or injury;
 (b) operational requirements of the department as provided for in the Labour Relations Act;
 (c) incapacity due to poor work performance; or
 (d) misconduct.

(3) (a) An employee of a department, other than a member of the services, an educator or a member of the Intelligence Services, who absents himself or herself from his or her official duties without permission of his or her executive authority or head of department for a period exceeding 10 days shall be deemed to have resigned with effect from the date he or she has absented himself or herself.

(b) If an employee who is deemed to have so resigned reports for duty within one calendar month, or such longer period as the relevant executive authority may on good cause shown approve, after his or her last day of attendance at his or her place of duty, an enquiry shall be held into the reasons for such employee’s absence and the executive authority shall, on good cause shown, approve the reinstatement of that employee in the department in his or her former post or any other capacity.

(c) If an employee is reinstated as contemplated in paragraph (b), the period of his or her absence from official duty shall be deemed to be absence on leave without pay.

(4) (a) A person dismissed in terms of subsection (2)(d) for misconduct, including misconduct relating to the offering or receipt of any undue gratification or the facilitation of such offering or receipt, may only be re-employed by any department after the expiration of a prescribed period.

(b) Different periods may be so prescribed for different categories of misconduct.

(c) Notwithstanding the condition contained in paragraph (a) that an employee may only be re-employed in any department after the expiration of a prescribed period, the Minister may prescribe acts of misconduct in respect of which no period need expire before a person is again employed in a department.

(d) Subject to paragraph (a), a decision whether or not to re-employ a person dismissed in terms of subsection (2)(d) shall take place with due regard to the nature of the misconduct concerned.

(5) (a) If, because of a supervening impossibility (other than incapacity referred to in subsection (2)(a) or (c)), an employee is unable to fulfil the terms of his or her contract of employment for the prescribed period, the

contract shall automatically terminate and the employee shall be deemed to have resigned with effect from the last day of that period.

(b) If an employee who is deemed to have so resigned reports for duty within one calendar month after the last day contemplated in paragraph (a), or within such longer period as the relevant executive authority may on good cause shown approve, an enquiry shall be held into whether the supervening impossibility still exists and the executive authority shall on good cause shown approve the reinstatement of that employee in the department in his or her former post or any other capacity.

(c) If an employee is reinstated in terms of paragraph (b), the period of absence from official duty shall be deemed to be absence on leave without pay.”.

Substitution of section 30 of Act promulgated under Proclamation 103 of 1994, as amended by section 25 of Act 47 of 1997

26. The following section is hereby substituted for section 30 of the principal Act:

“Other remunerative work by employees

30. (1) No employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department.

(2) For the purposes of subsection (1) the executive authority shall at least take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the employee’s functions in the department or constitute a contravention of the code of conduct contemplated in section 41(1)(b)(vi).”.

Amendment of section 31 of Act promulgated under Proclamation 103 of 1994, as amended by section 26 of Act 47 of 1997

27. Section 31 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a)(i) If any remuneration, allowance or other reward (other than remuneration contemplated in section 38(1) or (3)), is received by an employee in connection with the performance of his or her work in the public service otherwise than in accordance with this Act or a determination by or directive of the Minister, or is received contrary to section 30, that employee shall, subject to subparagraph (iii), pay into revenue—

(aa) an amount equal to the amount of any such remuneration, allowance or reward; or

(bb) if it does not consist of money, the value thereof as determined by the head of the department in which he or she was employed, at the time of the receipt thereof.

(ii) If the employee fails to so pay into revenue the amount or value, the said head of department shall recover it from him or her by way of legal proceedings and pay it into revenue.

(iii) The employee concerned may appeal against the determination of the head of department to the relevant executive authority.

(iv) The accounting officer of the relevant department may approve that the employee concerned retains the whole or a portion of the said remuneration, allowance or reward.

(b) If—

(i) in the opinion of the head of department mentioned in paragraph (a) an employee has received any remuneration, allowance or other reward contemplated in that paragraph; and

(ii) it is still in his or her possession or under his or her control or in the possession or under the control of any other person on his or her behalf, or, if it is money, has been deposited in any

- deposit-taking financial institution in his or her name or in the name of any other person on his or her behalf, that head of department may in writing require that employee or that other person or that financial institution not to dispose thereof, or, if it is money, not to dispose of a corresponding sum of money, as the case may be, pending the outcome of any legal steps for the recovery of that remuneration, allowance or reward or the value thereof.”; and
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) Subject to **[the provisions of]** paragraph (b), any salary, allowance, fee, bonus or honorarium which may be payable in respect of the services of an **[officer or]** employee placed temporarily at the disposal of **[any other]** an organ of state, another government **[, or of any council, institution]** or body **[or person]** contemplated in section 15(3) **[or (4)]** shall be paid into revenue.”.

Substitution of section 32 of Act promulgated under Proclamation 103 of 1994

28. The following section is hereby substituted for section 32 of the principal Act:

“Direction to perform other functions or to act in another post

32. (1) Subject to such conditions as may be prescribed, an executive authority or the head of a department may direct an employee under his or her control temporarily to perform any functions other than those ordinarily assigned to the employee or appropriate to his or her grade or post.
- (2) (a) An employee may be directed in writing to act in a post subject to such conditions as may be prescribed.
- (b) Such acting appointment shall be made—
- (i) in the case of the post of head of department, by the relevant executive authority;
 - (ii) in the case of any other post, by the employee occupying the post, unless otherwise determined by the head of department.
- (3) The performance evaluation of the relevant employee shall take place with due regard to a direction in terms of subsection (1) or (2).”.

Substitution of section 33 of Act promulgated under Proclamation 103 of 1994

29. The following section is hereby substituted for section 33 of the principal Act:

“Cession of emoluments

33. No **[officer or]** employee shall without written approval of the accounting officer, as defined in section 1 of the **[Exchequer Act, 1975 (Act No. 66 of 1975)]** Public Finance Management Act, of the department or office in which he or she is employed, cede the right to the whole or any part of any salary or allowance payable to him or her.”.

Substitution of section 34 of Act promulgated under Proclamation 103 of 1994, as substituted by section 11 of Act 86 of 1998

30. The following section is hereby substituted for section 34 of the principal Act:

“Reduction of salaries

34. The salary **[or scale of salary]** of an **[officer]** employee shall not be reduced without his or her consent except in terms of **[the provisions of]** section **[13(6) or] 38, [or of any collective agreement contemplated in section 18(b) of the Public Service Laws Amendment Act, 1998 or of]** an Act of Parliament or a collective agreement or determination on disciplinary procedures in terms of this Act.”.

Substitution of section 35 of Act promulgated under Proclamation 103 of 1994, as substituted by section 28 of Act 47 of 1997

31. The following section is hereby substituted for section 35 of the principal Act:

“Grievances of [officers and] employees

35. (1) For the purposes of asserting his or her right to have his or her **[complaint or]** grievance concerning an official act or omission investigated and considered by the Commission—

(a) a head of department may lodge that grievance with the Commission under the prescribed circumstances, on the prescribed conditions and in the prescribed manner; or

(b) **[an officer or]** any other employee may lodge that **[complaint or]** grievance with the relevant executive authority under the prescribed circumstances, on the prescribed conditions and in the prescribed manner, and if that **[complaint or]** grievance is not resolved to the satisfaction of such **[an officer or]** employee, that executive authority shall submit the **[complaint or]** grievance to the Commission in the prescribed manner and **[at the prescribed time or]** within the prescribed period.

(2) After the Commission has investigated and considered any such **[complaint or]** grievance, the Commission may recommend that the relevant executing authority acts in terms of a particular provision or particular provisions of this Act or any other law if, having regard to the circumstances of the case, the Commission considers it appropriate to make such a recommendation.

(3) For the purposes of subsection (1), the powers conferred upon the Commission by section 11 of the Commission Act shall be deemed to include the power to make rules which are not inconsistent with the provisions of this section as to the investigation of **[complaints or]** grievances concerning official acts or omissions, and ‘prescribed’ means prescribed by the Commission by rule under the Commission Act.

(4) Subject to subsection (1)(a), an employee may only refer a dispute to the relevant bargaining council in the public service, or institute court proceedings, in respect of a right referred to in subsection (1) if he or she has lodged a grievance in terms of that subsection and the department does not resolve the grievance to his or her satisfaction.”

Substitution of section 36 of Act promulgated under Proclamation 103 of 1994

32. The following section is hereby substituted for section 36 of the principal Act:

“Employees as candidates for, and becoming members of, legislatures

36. (1) An employee may be a candidate for election as a member of the National Assembly, a provincial legislature or a Municipal Council, subject to the code of conduct contemplated in section 41(1)(d)(ii) and any other prescribed limits and conditions.

(2) An employee elected as a member of the National Assembly or a provincial legislature or a full-time member of a Municipal Council shall be deemed to have resigned from the public service with effect from the date immediately before the date he or she assumes office as such member.

(3) An employee appointed as a permanent delegate of the National Council of Provinces shall be deemed to have resigned from the public service with effect from the date immediately before the date he or she assumes office as such delegate.

(4) An employee elected as a member of a Municipal Council—
 (a) may only remain an employee in the public service if he or she serves as a part-time member of the Council; and
 (b) shall comply with section 30(1).”

Substitution of section 37 of Act promulgated under Proclamation 103 of 1994, as amended by section 29 of Act 47 of 1997

33. The following section is hereby substituted for section 37 of the principal Act:

“Remuneration of [officers and] employees

37. (1) Employees shall be paid the salaries and allowances in accordance with the salary scale and salary level determined by the Minister in terms of section 3(5). 5

(2) An executive authority may, only if it is allowed by regulation and to the extent prescribed—

- (a) grant employees or classes of employees of the relevant department on appointment or transfer salaries higher than the minimum amounts of the appropriate salary levels of the applicable salary scales; 10
- (b) grant employees or classes of employees of the relevant department special advancement in salaries within the salary level of the salary scale applicable to them; and 15
- (c) grant an employee of the relevant department special advancement in salary within the salary level of the salary scale applicable to him or her or grant him or her a salary in accordance with a higher salary level or any other reward, if he or she has exceptional ability, special qualifications or rendered meritorious service and it is in the public interest.”. 20

Amendment of section 38 of Act promulgated under Proclamation 103 of 1994

34. Section 38 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 25
 - “(1)(a) If an incorrect salary, salary level, salary scale or reward is awarded to an employee, the relevant executive authority shall correct it with effect from the date on which it commenced. 25
 - (b) Paragraph (a) shall apply notwithstanding the fact that the employee concerned was unaware that an error had been made in the case where the correction amounts to a reduction of his or her salary.”; 30
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 30
 - “If an **[officer or]** employee contemplated in subsection (1) has in respect of his or her salary, including any portion of any allowance or other remuneration or any other benefit calculated on his or her basic salary or **[scale of]** salary scale or awarded to him or her by reason of his or her basic salary—”; 35
- (c) by the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph: 35
 - “(i) an amount equal to the amount of the overpayment shall be recovered from him or her by way of the deduction from his or her salary of such instalments as the **[head of department, with the approval of the Treasury,]** relevant accounting officer may determine if he or she is in the service of the State, or, if he or she is not so in service, by way of deduction from any moneys owing to him or her by the State, or by way of legal proceedings, or partly in the former manner and partly in the latter manner;” and 40 45
- (d) by the substitution for subsection (3) of the following subsection: 45
 - “(3) **[With the approval of the Treasury]** The accounting officer of the relevant department may remit the amount of an overpayment to be recovered in terms of subsection (2)(b) **[may be remitted]** in whole or in part.”. 50

Substitution of section 41 of Act promulgated under Proclamation 103 of 1994, as amended by section 30 of Act 47 of 1997

35. The following section is hereby substituted for section 41 of the principal Act:

“Regulations

- 41.** (1) The Minister may make regulations regarding— 5
- (a) any matter required or permitted by this Act to be prescribed;
- (b) any matter referred to in section 3(1), including, but not limited to— 10
- (i) the allocation, transfer and abolition of functions in terms of section 3(4) and the staff performing such functions;
- (ii) the restructuring or rationalisation of departments;
- (iii) employment additional to the establishment;
- (iv) the appointment of unpaid voluntary workers who are not employees and their functions;
- (v) the co-ordination of work in a department or between two or more departments; 15
- (vi) a code of conduct for employees;
- (vii) the disclosure of financial interests by all employees or particular categories of employees and the monitoring of such interests; and
- (viii) the position of employees not absorbed into a post upon its re-grading; 20
- (c) the designation of one or more particular categories of employees to regulate one or more employment-related matters differently from other employees or categories of employees;
- (d) the reporting on and assessment of compliance with the provisions of this Act and the review for appropriateness and effectiveness of any regulations, determinations and directives made under this Act; 25
- (e) the designation or establishment of one or more authorities vested with the power to authorise a deviation from any regulation in respect of an employee or category of employees under stated circumstances, including the power to authorise such deviation with retrospective effect, but only if it is in the public interest and not to the detriment of any employee; and 30
- (f) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 35
- (2) Different regulations may be made to suit the varying requirements of particular departments or divisions of departments, of particular categories of employees or of particular kinds of employment in the public service.
- (3) The Minister may issue directives which are not inconsistent with this Act to elucidate or supplement any regulation.”. 40

Substitution of section 42 of Act promulgated under Proclamation 103 of 1994, as amended by section 31 of Act 47 of 1997

36. The following section is hereby substituted for section 42 of the principal Act:

“Public service handbooks

45

- 42.** The Minister shall cause appropriate determinations and directives made or issued in terms of this Act to be included in one or more handbooks to be used by the public service.”.

Substitution of section 42A of Act promulgated under Proclamation 103 of 1994, as inserted by section 32 of Act 47 of 1997

37. The following section is hereby substituted for section 42A of the principal Act:

“Delegation

- 42A.** (1) (a) The Minister may— 5
- (i) delegate to the Director-General: Public Service and Administration any power conferred on the Minister by this Act, except the power to make regulations; or
 - (ii) authorise that Director-General to perform any duty imposed on the Minister by this Act. 10
- (b) The Director-General: Public Service and Administration may—
- (i) delegate to any employee of his or her department any power delegated to him or her in terms of paragraph (a); or
 - (ii) authorise that employee to perform any duty he or she is authorised to perform in terms of paragraph (a). 15
- (2) (a) Subject to subsection (3)(b), the Premier of a province may—
- (i) delegate to the head of the Office of a Premier in the province any power conferred on the Premier by this Act; or
 - (ii) authorise that head to perform any duty imposed on the Premier by this Act. 20
- (b) The head of the Office of a Premier may—
- (i) delegate to any employee in that Office any power delegated to him or her in terms of paragraph (a); or
 - (ii) authorise that employee to perform any duty he or she is authorised to perform in terms of paragraph (a). 25
- (3) The executive authority referred to in section 12(1) may, in the case of—
- (a) the President, delegate to the Deputy President or a Minister any power conferred on the President by section 12; or
 - (b) the Premier of a province, authorise a Member of the relevant Executive Council to perform any duty imposed on the Premier by section 12. 30
- (4) Subject to subsection (3), an executive authority may—
- (a) delegate to the head of a department any power conferred on the executive authority by this Act; or 35
 - (b) authorise that head to perform any duty imposed on the executive authority by this Act.
- (5) The head of a department or other functionary may—
- (a) delegate to any employee of the department any power— 40
 - (i) conferred on that head by this Act;
 - (ii) delegated to that head in terms of subsection (4); or
 - (iii) in the case of a government agency, assigned or delegated to the head in terms of section 7A(3) or (4); or
 - (b) authorise that employee to perform any duty— 45
 - (i) imposed on that head by this Act;
 - (ii) that that head is authorised to perform in terms of subsection (4); or
 - (iii) in the case of a government agency, assigned or delegated to that head in terms of section 7A(3) or (4). 50
- (6) Any person to whom a power has been delegated or who has been authorised to perform a duty under this section shall exercise that power or perform that duty subject to the conditions the person who made the delegation or granted the authorisation considers appropriate.
- (7) Any delegation of a power or authorisation to perform a duty in terms of this section— 55
- (a) shall be in writing;
 - (b) does not prevent the person who made the delegation or gave the authorisation from exercising that power or performing that duty himself or herself; and
 - (c) may at any time be withdrawn in writing by that person.”.

Substitution of Schedule 1 to Act promulgated under Proclamation 103 of 1994, as substituted by section 13 of Act 86 of 1998 and amended by Proclamations 73, 82, 104, 117 and 118 of 1999, Proclamations 17 and 25 of 2000, Government Notice No. 517 of 2000, Proclamations 37, 39 and 71 of 2000, Proclamation 62 of 2002 and Proclamation R.14 of 2003

5

38. The following schedule is hereby substituted for Schedule 1 to the principal Act:

“SCHEDULE 1

NATIONAL DEPARTMENTS AND OFFICES OF PREMIER AND HEADS THEREOF

(Section 7(2) and (3))

10

Column 1	Column 2	
Department of Agriculture	Director-General: Agriculture	
Department of Arts and Culture	Director-General: Arts and Culture	
Department of Communications	Director-General: Communications	15
Department of Correctional Services	Commissioner: Correctional Services	
Department of Defence	Secretary for Defence	
Department of Education	Director-General: Education	
Department of Environmental Affairs and Tourism	Director-General: Environmental Affairs and Tourism	20
Department of Foreign Affairs	Director-General: Foreign Affairs	
Department of Government Communication and Information System	Director-General: Government Communication and Information System	
Department of Health	Director-General: Health	25
Department of Home Affairs	Director-General: Home Affairs	
Department of Housing	Director-General: Housing	
Department of Justice and Constitutional Development	Director-General: Justice and Constitutional Development	30
Department of Labour	Director-General: Labour	
Department of Land Affairs	Director-General: Land Affairs	
Department of Minerals and Energy	Director-General: Minerals and Energy	
Department of Provincial and Local Government	Director-General: Provincial and Local Government	
Department of Public Enterprises	Director-General: Public Enterprises	35
Department of Public Service and Administration	Director-General: Public Service and Administration	
Department of Public Works	Director-General: Public Works	
Department of Safety and Security	National Commissioner: South African Police Service	
Department of Science and Technology	Director-General: Science and Technology	40
Department of Social Development	Director-General: Social Development	
Department of Trade and Industry	Director-General: Trade and Industry	
Department of Transport	Director-General: Transport	
Department of Water Affairs and Forestry	Director-General: Water Affairs and Forestry	
Independent Complaints Directorate	Executive Director: Independent Complaints Directorate	45
Inspectorate for Social Assistance	Executive Director: Inspectorate for Social Assistance	
National Intelligence Agency	Director-General: National Intelligence Agency	
National Treasury	Director-General: National Treasury	50
Office of the Public Service Commission	Director-General: Office of the Public Service Commission	
Office of the Premier: Eastern Cape	Director-General: Office of the Premier of Eastern Cape	
Office of the Premier: Free State	Director-General: Office of the Premier of Free State	55
Office of the Premier: Gauteng	Director-General: Office of the Premier of Gauteng	
Office of the Premier: KwaZulu-Natal	Director-General: Office of the Premier of KwaZulu-Natal	

Column 1	Column 2	
Office of the Premier: Limpopo	Director-General: Office of the Premier of Limpopo	
Office of the Premier: Mpumalanga	Director-General: Office of the Premier of Mpumalanga	
Office of the Premier: Northern Cape	Director-General: Office of the Premier of Northern Cape	5
Office of the Premier: North West	Director-General: Office of the Premier of North West	
Office of the Premier: Western Cape	Director-General: Office of the Premier of Western Cape	
South African Management and Development Institute	Director-General: South African Management and Development Institute	10
South African National Academy of Intelligence	Chief Executive Officer: South African National Academy of Intelligence	
South African Secret Service	Director-General: South African Secret Service	15
Sport and Recreation South Africa	Director-General: Sport and Recreation South Africa	
Statistics South Africa	Statistician-General: Statistics South Africa	
The Presidency	Director-General: The Presidency	

Substitution of Schedule 2 to Act promulgated under Proclamation 103 of 1994, as substituted by section 14 of Act 86 of 1998 and amended by Proclamations 105 and 119 of 1999, Proclamation 32 of 2000, Proclamations 5, R.38, R.41, R.44 and R.55 of 2001, Proclamations R.49, R.711 and R.79 of 2002, Proclamations R.4 and R.64 of 2003, Proclamations R.34, R.42, R.48, R.50 and R.64 of 2004, Proclamation R.7, R.33 and R.64 of 2005 and Proclamation R.18 and R.26 of 2006

39. The following schedule is hereby substituted for Schedule 2 to the principal Act: 25

“SCHEDULE 2

PROVINCIAL DEPARTMENTS AND HEADS THEREOF

(Section 7(2) and (3))

Column 1	Column 2	
Eastern Cape		
Department of Agriculture	Head: Agriculture	
Department of Economic Affairs, Environment and Tourism	Head: Economic Affairs, Environment and Tourism	
Department of Education	Head: Education	35
Department of Health	Head: Health	
Department of Housing, Local Government and Traditional Affairs	Head: Housing, Local Government and Traditional Affairs	
Department of Public Works	Head: Public Works	40
Department of Roads and Transport	Head: Roads and Transport	
Department of Safety and Liaison	Head: Safety and Liaison	
Department of Social Development	Head: Social Development	
Department of Sport, Recreation, Arts and Culture	Head: Sport, Recreation, Arts and Culture	
Provincial Treasury	Head: Provincial Treasury	45
Free State		
Department of Agriculture	Head: Agriculture	
Department of Education	Head: Education	50
Department of Health	Head: Health	
Department of Local Government and Housing	Head: Local Government and Housing	
Department of Public Works, Roads and Transport	Head: Public Works, Roads and Transport	
Department of Public Safety, Security and Liaison	Head: Public Safety, Security and Liaison	
Department of Social Development	Head: Social Development	55
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture	
Department of Tourism, Environmental and Economical Affairs	Head: Tourism, Environmental and Economical Affairs	
Free State Provincial Treasury	Head: Free State Provincial Treasury	60

Column 1	Column 2	
Gauteng		
Department of Agriculture, Conservation and Environment	Head: Agriculture, Conservation and Environment	5
Department of Community Safety	Head: Community Safety	
Department of Economic Development	Head: Economic Development	
Department of Education	Head: Education	
Department of Health	Head: Health	
Department of Housing	Head: Housing	10
Department of Local Government	Head: Local Government	
Department of Public Transport, Roads and Works	Head: Public Transport, Roads and Works	
Department of Social Development	Head: Social Development	
Department of Sports, Arts, Culture and Recreation	Head: Sports, Arts, Culture and Recreation	
Gauteng Shared Services	Head: Gauteng Shared Services	15
Gauteng Treasury	Head: Gauteng Treasury	
Column 1		
Column 2		
KwaZulu-Natal		
Department of Agriculture	Head: Agriculture	20
Department of Arts, Culture and Tourism	Head: Arts, Culture and Tourism	
Department of Community Safety and Liaison	Head: Community Safety and Liaison	
Department of Economic Development	Head: Economic Development	
Department of Education	Head: Education	
Department of Health	Head: Health	25
Department of Housing	Head: Housing	
Department of Local Government and Traditional Affairs	Head: Local Government and Traditional Affairs	
Department of Sports and Recreation	Head: Sports and Recreation	
Department of the Royal Household	Head: Royal Household	30
Department of Traditional and Local Government Affairs	Head: Traditional and Local Government Affairs	
Department of Transport	Head: Transport	
Department of Welfare and Population Development	Head: Welfare and Population Development	
Department of Works	Head: Works	35
Provincial Treasury	Head: Provincial Treasury	
Column 1		
Column 2		
Limpopo		
Department of Agriculture	Head: Agriculture	40
Department of Economic Development, Environment and Tourism	Head: Economic Development, Environment and Tourism	
Department of Education	Head: Education	
Department of Health and Social Development	Head: Health and Social Development	45
Department of Local Government and Housing	Head: Local Government and Housing	
Department of Public Works	Head: Public Works	
Department of Roads and Transport	Head: Roads and Transport	
Department of Safety, Security and Liaison	Head: Safety, Security and Liaison	
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture	50
Provincial Treasury	Head: Provincial Treasury	
Column 1		
Column 2		
Mpumalanga		
Department of Agriculture and Land Administration	Head: Agriculture and Land Administration	55
Department of Culture, Sport and Recreation	Head: Culture, Sport and Recreation	
Department of Economic Development and Planning	Head: Economic Development and Planning	
Department of Education	Head: Education	
Department of Finance	Head: Finance	
Department of Health and Social Services	Head: Health and Social Services	60
Department of Local Government and Housing	Head: Local Government and Housing	
Department of Public Works	Head: Public Works	

Column 1	Column 2	
Mpumalanga		
Department of Roads and Transport	Head: Roads and Transport	
Department of Safety and Security	Head: Safety and Security	
Column 1		
Column 2		
Northern Cape		
Department of Agriculture and Land Reform	Head: Agriculture and Land Reform	
Department of Economic Affairs	Head: Economic Affairs	
Department of Education	Head: Education	10
Department of Health	Head: Health	
Department of Housing and Local Government	Head: Housing and Local Government	
Department of Safety and Liaison	Head: Safety and Liaison	
Department of Social Services and Population Development	Head: Social Services and Population Development	15
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture	
Department of Tourism, Environment and Conservation	Head: Tourism, Environment and Conservation	
Department of Transport, Roads and Public Works	Head: Transport, Roads and Public Works	
Provincial Treasury	Head: Provincial Treasury	20
Column 1		
Column 2		
North West		
Department of Agriculture, Conservation, and Environment	Head: Agriculture, Conservation and Environment	25
Department of Developmental Local Government and Housing	Head: Developmental Local Government and Housing	
Department of Economic Development and Tourism	Head: Economic Development and Tourism	
Department of Education	Head: Education	30
Department of Finance	Head: Finance	
Department of Health	Head: Health	
Department of Public Works	Head: Public Works	
Department of Social Development	Head: Social Development	
Department of Sports, Arts and Culture	Head: Sports, Arts and Culture	35
Department of Transport, Roads and Community Safety	Head: Transport, Roads and Community Safety	
Column 1		
Column 2		
Western Cape		
Department of Agriculture	Head: Agriculture	40
Department of Community Safety	Head: Community Safety	
Department of Cultural Affairs and Sport	Head: Cultural Affairs and Sport	
Department of Economic Development and Tourism	Head: Economic Development and Tourism	
Department of Education	Head: Education	45
Department of Environmental Affairs and Development Planning	Head: Environmental Affairs and Development Planning	
Department of Finance	Head: Finance	
Department of Health	Head: Health	50
Department of Housing	Head: Housing	
Department of Local Government	Head: Local Government	
Department of Social Development	Head: Social Development	
Department of Transport and Public Works	Head: Transport and Public Works	

Substitution of Schedule 3 to Act promulgated under Proclamation 103 of 1994, as inserted by section 15 of Act 86 of 1998 and amended by Proclamations 82 and 117 of 1999, Proclamations 17 and 71 of 2000 and Proclamations R.14 and R.33 of 2003 55

40. The following schedule is hereby substituted for Schedule 3 to the principal Act:

“SCHEDULE 3

PART A

NATIONAL GOVERNMENT AGENCIES AND HEADS THEREOF

(Section 7(2) and (3))

Column 1 Name of national government agency	Column 2 Designation of head of national government agency	Column 3 Principal national department
Centre of Public Service Innovation	Executive Director	Department of Public Service and Administration

PART B

PROVINCIAL GOVERNMENT AGENCIES AND HEADS THEREOF

(Section 7(2) and (3))

Column 1 Name of provincial government agency	Column 2 Designation of head of provincial government agency	Column 3 Principal Office of the Premier or provincial department

Deletion and substitution of certain words in Act promulgated under Proclamation 103 of 1994

41. (1) The principal Act is hereby amended—

- (a) by the deletion of the expressions “officer or” and “officers and”, wherever they occur; and
- (b) by the substitution for the expressions “executing authority” and “executing authorities”, wherever they occur, of the expressions “executive authority” and “executive authorities”, respectively.

(2) From the date of commencement of this section, unless clearly inappropriate, every person who is an “officer” as defined in section 1(1) of the principal Act, read with the Public Service Amendment Act, 1996 (Act No. 13 of 1996), immediately before the said commencement date shall be deemed to be an employee as so defined, and the provisions of the principal Act and any other law shall for all purposes apply to such person as if he or she were an “employee” as so defined.

Amendment of laws

42. The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

Short title and commencement

43. This Act is called the Public Service Amendment Act, 2006, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS AMENDED

(Section 43)

No. and year law	Short title	Extent of amendment
Act No. 112 of 1991	Upgrading of Land Tenure Rights Act, 1991	The amendment of section 24A by the substitution in subsection (8) for the expression “Public Service Commission and the relevant provincial service commission” of the expression “Minister for the Public Service and Administration”.
Act No. 22 of 1994	Restitution of Land Rights Act, 1994	The amendment of section 28I by the deletion of the proviso to subsection (2).
Act No. 43 of 1996	National Archives and Record Service of South Africa Act, 1996	The amendment of section 4 by the substitution in subsection (1) for the expression “Public Service Commission contemplated in section 196 of the Constitution” of the expression “Minister for the Public Service and Administration”.
Act No. 57 of 1997	Lotteries Act, 1997	The amendment of section 7 by the deletion in subsection (3) of the expression “and the Public Service Commission”.
Act No. 1 of 1999	Public Finance Management Act, 1999	<p>The amendment of section 1 by—</p> <p>(a) by the substitution for the definition of “department” of the following definition:</p> <p>“‘department’ means a national or provincial department or a national or provincial government agency;”;</p> <p>(b) by the substitution for the definition of “national department” of the following definitions:</p> <p>“‘national department’ means a department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), but excluding the Office of a Premier; ‘national government agency’ means a national government agency listed in Part A of Schedule 3 to the Public Service Act, 1994;”;</p> <p>and</p> <p>(c) by the substitution for the definition of “provincial department” of the following definitions:</p> <p>“‘provincial department’ means—</p> <p>(a) the Office of a Premier listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);</p> <p>(b) a provincial department listed in Schedule 2 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);</p> <p>‘provincial government agency’ means a provincial government agency listed in Part B of Schedule 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);”.</p>

No. and year law	Short title	Extent of amendment
Act No. 20 of 1999	Road Traffic Management Corporation Act, 1999	The amendment of section 20 by the deletion in subsection (3) of the expression “, the Public Service Commission”.
Act No. 3 of 2000	Promotion of Administrative Justice Act, 2000	The amendment of section 10 by the substitution for subsection (3) of the following subsection: “(3) This section may not be construed as empowering the Minister to make regulations, without prior consultation with the [Public Service Commission] Minister for the Public Service and Administration , regarding any matter which [may be regulated by the Public Service Commission under the Constitution or any other law] affects the public service.”.
Act No. 65 of 2002	Intelligence Services Act, 2002	The amendment of section 5 by the substitution in subsection (1) for the expression “an organisational component” of the expression “a national department”.
Act No. 13 of 2004	Social Assistance Act, 2004	The amendment of section 24 by the substitution in subsection (1) for the expression “an organisational component contemplated in Schedule 3” of the expression “a national department contemplated in Schedule 1”.

MEMORANDUM ON THE OBJECTS OF THE PUBLIC SERVICE AMENDMENT BILL, 2006

1. BACKGROUND

The Bill proposes to address various organisational and human resource areas that directly or indirectly hamper service delivery. These include the following:

- (a) Currently the Act does not adequately provide for deploying staff where they are most needed.
- (b) Some government functions are provided via departments, not close to the point of service delivery and without direct accountability and decision-making by the functionaries tasked with such delivery. On the other hand some government functions are provided via entities outside the public service without direct control and influence by the relevant political head. To enable direct service delivery through a focussed and fully ring-fenced entity, a new institutional form, called a government agency, within the public service is proposed.
- (c) The Public Service Act, 1994 (Proclamation No. 103 of 1994) (the Act), and its prescripts are often not adhered to resulting in weak organisational and human resource practices, and legal disputes. It is therefore proposed that the enforcement of the Act should be strengthened.
- (d) Certain provisions of the Act have given rise to legal disputes, while others are obsolete, overly complex or in conflict with other legislation. These provisions have been rectified or removed, as the case may be.

2. OBJECTS OF BILL

2.1 The overarching object of the Bill is to improve the organisational human resource framework, which in turn will improve service delivery. To this end, the key objectives of the Bill are to—

- (a) improve staff mobility arrangements for the public service;
- (b) enable greater alignment between the conditions of service of the general public service falling under the Act and certain sectors which, although part of the public service, have their own employment legislation;
- (c) introduce government agencies as a new institutional form within the public service to enable direct service delivery through a focussed, ring-fenced separate entity under the direct control of a Minister or other executive authority;
- (d) enhance compliance with the Act through investigations and compulsory discipline of transgressors and reporting thereon;
- (e) address a number of legal difficulties arising from the day-to-day application of the Act as well as arbitrations and court cases; and
- (f) simplify the Act through streamlining several provisions, removing obsolete provisions and aligning the Act with other legislation in order to facilitate its administration in order to facilitate its administration, which in turn will enhance service delivery.

2.2 The amendments in the Bill of a material nature include the following:

- 2.2.1 An empowering provision is included for the Minister for the Public Service and Administration (the Minister) to determine, after consultation with the relevant executive authorities, that any condition of service or other employment practice, determined in terms of the Act, applies to all or any category of educators or members of the South African Police Service or the Department of Correctional Services. This proposal is aimed at obtaining greater alignment in the conditions of service of the general public service and the mentioned sectors. This would for example enable the Minister to determine that the salary increase for members of the Senior Management Service (SMS) in the general public service would also apply to SMS members in the mentioned sectors. Members of the South African National Defence Force (because of its own bargaining arrangements) and the Intelligence Services are not covered by this proposal. See clause 2 of the Bill.

- 2.2.2 Section 3 of the Act was redrafted to more clearly set out the areas in respect of which the Minister may make policy. It also contains a new provision enabling the Minister to appoint a consultative body or an advisory body to assist the Minister on any of the mentioned policy areas. See clause 3 of the Bill.
- 2.2.3 It is proposed that section 3B of the Act that deals with heads of department and their career incidents should be repealed since its content is to be included in a new section 12. The new section 12 seeks to enable the President to transfer the head of a national department to a province and the head of the Office of a Premier or a provincial department to another province or a national department. See clause 17 of the Bill.
- 2.2.4 The State Law Advisers advised that all collective agreements pertaining to conditions of service should be implemented by means of ministerial determinations in terms of section 3(3)(c) of the Act. To limit this need to cases where additional provisions are required to give effect to a collective agreement and also to assist with the enforcement of collective agreements, collective agreements concluded after the commencement of the Bill pertaining to employees appointed under the Act are deemed to be ministerial determinations. To improve compliance with the provisions of the Act, the Minister is empowered to conduct investigations and, if an investigation confirms non-compliance, to take remedial steps and also make a decision which would be deemed to be the decision of the relevant functionary. See clause 7 of the Bill.
- 2.2.5 Clauses 9 and 10 of the Bill propose government agencies as new organisational forms in the public service. The creation of government agencies as supplementary organisational forms within the public service will enable direct service delivery through a focussed and fully ring-fenced entity. They will be under the direct control of a Minister or other executive authority, with accountability and responsibility vested in the functionaries directly involved with the performance of the functions in question, and in collaboration with that executive authority's department. A government agency will be a separate institution in the public service and its head will be the accounting officer in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999). The agency model is reserved for an institution with a unique identity that has specific measurable functions and that can be logically grouped in terms of a particular service delivery model, for example a large public hospital. Such an agency may have original statutory powers or assigned or delegated statutory powers and duties. The assignment of statutory powers and duties of the executive authority to the head of the agency will be subject to Parliament's approval and the exercise and performance thereof will be subject to specified conditions. A government agency is partnered with a principal department (listed in Schedule 1 to the Act) which will assist the executive authority with oversight of the agency on policy implementation, performance, integrated planning, budgeting and service delivery. The President is empowered to establish a government agency by proclamation in the *Gazette*, after *inter alia* a request by the relevant executive authority or, in the case of a provincial agency, the relevant Premier, and advice by the Minister of Finance and the Minister. The advantages of using this organisational form in the public service include—
- (a) administrative and operational arrangements to be customised to suit a particular service delivery environment;
 - (b) improved governance through direct accountability and decision-making as close as possible to the point of service delivery;

- (c) direct control and influence by Ministers over service delivery outcomes without the need to create entities outside the public service (e.g. public entities);
- (d) an institutional mechanism to reincorporate some public entities, if required, into the public service; and
- (e) the establishment, if required, of an advisory board to advise the executive authority on service delivery matters and to accommodate stakeholder interests.

It is proposed that current Schedule 3 organisational components should be moved to Schedule 1 since apart from different designations no difference exists between Schedule 1 and 3 bodies. See clause 41 of the Bill.

- 2.2.6 All references in the Act to promotion have been omitted to accord with the principle of open competition (for at least posts in the SMS) and limited open competition (for other posts) and to limit unfair labour practice disputes in this regard. See clause 14 of the Bill.
- 2.2.7 Section 14 of the Act, which deals with transfer of staff within the public service, has been clarified and now seeks to provide, amongst other things, for the transfer of employees without their consent as long as due process has been followed and it is in the public interest. See clause 20 of the Bill.
- 2.2.8 A new section 14A is proposed to facilitate the mobility of staff within the public service by providing for continued employment despite a transfer or a change in employment capacity. The new section 15(1) aims to clarify a similar provision for certain transfers of employees from organs of state to the public service. In addition, the new section 15 clarifies secondments to and from the public service and enables secondments within the public service (internal secondments are currently only dealt with in regulations made under the Act). Provision for secondment of employees without their consent, but following due process and acting in the public interest, is also included. See clauses 21 and 22 of the Bill.
- 2.2.9 A new section 16A contains provisions similar to the Public Finance Management Act, 1999, to assist with the enforcement of the provisions of the Act, e.g. compelling executive authorities to take disciplinary steps against transgressing heads of department, and heads of department to take such steps against transgressing employees. See clause 24 of the Bill.
- 2.2.10 Clause 24 of the Bill (a new section 16B) aims to remove current legal difficulties with the head of department being vested by the Act with the power to dismiss an employee on the ground of misconduct (section 17(1)(b) of the Act) while the chairperson of the disciplinary hearing pronounces the sanction in terms of the relevant collective agreement for employees on levels 1 to 12 and the relevant ministerial determination for SMS members (levels 13 to 16). It is proposed that all sanctions pronounced by the chair must be implemented by the head of department. Provision is also made for the commencement or continuation of a disciplinary hearing by a new department in respect of alleged misconduct by the employee at his or her former department.
- 2.2.11 Section 17(2) of the Act, which contains the grounds for dismissal, was revisited to align it with the grounds for dismissal recognised by the Labour Relations Act, 1995 (Act No. 66 of 1995). The abscondment provision was revised to shorten the period from one calendar month to 10 days and also stating that it would result in

deemed resignation (termination by operation of law) to avoid the need to follow disciplinary procedures. To deal with cases where an employee for reasons other than his or her incapacity is unable to perform work for a prescribed period (supervening impossibility such as long imprisonment), provision is also made for deemed resignation. As with the abscondment arrangements, provision is made for a subsequent reinstatement request and process. See clause 25 of the Bill.

- 2.2.12 Provision is made for an aggrieved employee to first exhaust the grievance procedure within the department before referring a dispute to a bargaining council or instituting court proceedings regarding the subject matter of his or her grievance. See clause 31 of the Bill.
- 2.2.13 Section 36 of the Act is proposed to be amended to deal only with employees candidatures for election to the National Assembly or provincial legislature or municipal council and their appointment as permanent delegates to the National Council of Provinces. See clause 32 of the Bill.
- 2.2.14 Section 41 of the Act, which deals with the areas on which the Minister must or may make regulations, has been revisited as a whole to streamline it by referring to the policy-making powers of the Minister (new section 3(1)) and omitting unnecessary detailed provisions dealt with in overarching provisions. See clause 35 of the Bill.
- 2.2.15 The new section 42A is a comprehensive delegation provision enabling the Minister, an executive authority and a head of department to delegate their powers or duties in terms of the Act. See clause 37 of the Bill.

3. DEPARTMENTS OR BODIES CONSULTED

A draft of the Bill was distributed to all Ministers and all Premiers (also for further distribution to the Members of their Executive Councils) for comment.

4. FINANCIAL IMPLICATIONS FOR STATE

No additional costs are foreseen for the implementation of the provisions of the Bill. The funding for the establishment of government agencies will be included in the Medium Term Expenditure Framework of the relevant departments.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of the Public Service and Administration are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it provides for legislation envisaged in section 197 of the Constitution.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.